

STATEMENT OF
HONORABLE CONSTANCE HORNER
DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

AT A HEARING ON

S. 2197
THE FEDERAL EMPLOYEES' OPTIONAL EARLY
RETIREMENT ACT OF 1986

MAY 15, 1986

225-7310

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR INVITING ME TO APPEAR TODAY TO DISCUSS THE
ADMINISTRATION'S VIEWS ON S. 2197, THE FEDERAL EMPLOYEES'
OPTIONAL EARLY RETIREMENT ACT OF 1986. I AM ACCOMPANIED
TODAY BY MR. JAMES W. MORRISON, JR., OPM'S ASSOCIATE
DIRECTOR FOR COMPENSATION.

S. 2197 IS BASED ON AN INTERESTING CONCEPT: NAMELY, THAT
THE FEDERAL GOVERNMENT, IN ITS EFFORTS TO REDUCE THE SIZE
OF ITS WORK FORCE, SHOULD DO SO IN THE MOST HUMANE WAY
POSSIBLE, BY OFFERING A VERY WIDE SEGMENT OF ITS WORK FORCE
THE OPPORTUNITY TO RETIRE EARLY. THIS APPROACH HAS BEEN

USED BY MANY LEADING PRIVATE COMPANIES WHEN THEY HAVE BEEN FACED WITH THE NEED FOR ACROSS-THE-BOARD PERSONNEL REDUCTIONS, DRIVEN BY ADVERSE ECONOMIC CONDITIONS AND BUSINESS CONSIDERATIONS. S. 2197 RAISES THE ISSUE OF WHETHER A MORE FLEXIBLE EARLY RETIREMENT TOOL WOULD BE NEEDED IN FEDERAL PERSONNEL POLICY IF A DEEP REDUCTION WERE TO BE REQUIRED OR PLANNED FOR THE FEDERAL WORK FORCE.

UNDER S. 2197, THERE WOULD BE A GOVERNMENTWIDE OPPORTUNITY FOR EARLY RETIREMENT FROM JULY THROUGH DECEMBER OF THIS YEAR. EARLY RETIREMENT WOULD BE AVAILABLE TO THE SAME AGE AND SERVICE COMBINATIONS THAT ARE NOW COVERED BY OUR MORE LIMITED EARLY VOLUNTARY AND EARLY INVOLUNTARY RETIREMENT PROGRAMS, THAT IS, 20 YEARS OF SERVICE AND AGE 50, OR 25 YEARS OF SERVICE AND ANY AGE. IN ADDITION, S. 2197 WOULD EXTEND THE EARLY RETIREMENT ELIGIBILITY TO TWO NEW CATEGORIES THAT HAVE NOT BEEN COVERED BEFORE, 15 YEARS OF SERVICE AND AGE 55, AND 5 YEARS OF SERVICE AND AGE 57. CERTAIN SHORTAGE OCCUPATIONS SPECIFIED IN THE LAW WOULD BE EXCLUDED.

THE ATTRACTIVENESS OF THIS TO THOSE EMPLOYEES WHO WOULD BE ELIGIBLE TO AND WANT TO RETIRE IS OBVIOUS. TO THE EXTENT THAT IT IS A MORE ECONOMICAL WAY OF ACHIEVING REQUIRED

EMPLOYMENT REDUCTIONS, IT ALSO HAS APPEAL TO THOSE OF US, IN BOTH THE EXECUTIVE AND LEGISLATIVE BRANCHES, WHO SHARE IN THE GOAL OF REDUCING THE SIZE OF THE FEDERAL GOVERNMENT. HOWEVER, THERE ARE SERIOUS DISADVANTAGES TO A PROGRAM OF EARLY RETIREMENT. FOR EXAMPLE, COMPARED TO THE USE OF ATTRITION TO ACHIEVE PERSONNEL REDUCTIONS, WHICH IS CERTAINLY THE NORMAL METHOD, EARLY RETIREMENT IS VERY COSTLY. MOREOVER, THE EARLY RETIREMENT METHOD TURNS DECISION-MAKING ABOUT HOW A REDUCTION IS ACHIEVED OVER TO THE EMPLOYEES AND MAKES THE PROCESS ALMOST RANDOM. ALSO, WHILE THE RETIREMENT OF AN EMPLOYEE CAN SAVE THE GOVERNMENT MONEY, SINCE AN EMPLOYEE'S ANNUITY IS LESS THAN SALARY, THIS SAVINGS TURNS INTO A COST IF THE RETIRED EMPLOYEE IS REPLACED. IN RECOGNITION OF THIS PROBLEM, S. 2197 WOULD ESTABLISH A 5-YEAR FREEZE ON REPLACING EMPLOYEES WHO RETIRE DURING THE 6-MONTH EARLY RETIREMENT PERIOD. OPM WOULD BE PERMITTED TO GRANT EXCEPTIONS TO THIS FREEZE IN THE CASE OF POSITIONS THAT ARE ESSENTIAL TO THE MISSION OF AN AGENCY OR THAT ARE SUPPORTED BY USER FEES.

AS INDICATED EARLIER, S. 2197 AND ITS CONCEPT OF A GOVERNMENTWIDE EARLY RETIREMENT PROGRAM HAS STIMULATED A BROAD REEXAMINATION IN THE EXECUTIVE BRANCH OF THE ROLE OF EARLY RETIREMENT IN FEDERAL PERSONNEL POLICY, AND THE PRESIDENT'S DOMESTIC POLICY COUNCIL IS CONSIDERING THIS ISSUE. WHILE NO CONCLUSIONS HAVE BEEN REACHED ON RECOMMENDATIONS TO BE MADE TO THE PRESIDENT, I WOULD LIKE TO SHARE WITH YOU SOME OF OUR THOUGHTS ON THIS ISSUE.

FIRST, I THINK WE NEED TO EMPHASIZE THAT ALL OF US IN THE EXECUTIVE BRANCH ARE VERY CONCERNED THAT A GOVERNMENTWIDE EARLY RETIREMENT OPPORTUNITY COULD LEAD TO EXCESSIVE LOSSES OF OUR MOST VALUABLE EMPLOYEES. UNDER THE PRESIDENT'S BUDGET, OUR CIVILIAN WORK FORCE WOULD BE REDUCED BY ABOUT 23,500 IN FISCAL YEAR 1987--A GOAL THAT CAN BE ACHIEVED LARGELY OR COMPLETELY BY ATTRITION RATHER THAN REDUCTION IN FORCE--YET THE NUMBER WHO MIGHT RETIRE IN A GOVERNMENTWIDE "EARLY OUT" HAS BEEN ESTIMATED TO POSSIBLY APPROACH 3 TIMES THAT NUMBER, AND COULD GO MUCH HIGHER. INCLUDED IN THIS EXODUS WOULD BE MANY OF OUR MOST VALUABLE, AND MOST DIFFICULT-TO-REPLACE, EMPLOYEES. THIS WOULD BE TRUE EVEN IN AGENCIES AND PROGRAMS THAT ARE SLATED TO REMAIN FULLY FUNDED OR TO GROW. THIS COULD HAVE A DEVASTATING EFFECT ON THE ABILITY OF OUR MANAGERS TO MANAGE, AND COULD GRAVELY HARM THE EFFICIENCY AND EFFECTIVENESS OF GOVERNMENT, AND COULD EVEN ENDANGER THE NATIONAL DEFENSE.

ACCORDINGLY, WE THINK IT WOULD BE ESSENTIAL THAT ANY LEGISLATION GIVE THE PRESIDENT, OR HIS DESIGNEE, DISCRETION TO EXCLUDE FROM ANY NEW EARLY RETIREMENT AUTHORITY ANY AGENCY OR COMPONENT THAT HE BELIEVES SHOULD NOT BE COVERED.

A SECOND ISSUE THAT HAS ARISEN IS THE EXISTENCE OF STATUTORY IMPEDIMENTS TO AGENCY MANAGEMENT.

IN WHAT I CONSIDER TO BE A SERIOUS INTRUSION INTO THE EXECUTIVE'S ABILITY TO MANAGE, CONGRESS HAS SEEN FIT IN RECENT YEARS TO REQUIRE VARIOUS AGENCIES AND PROGRAMS TO MAINTAIN CERTAIN MINIMUM EMPLOYMENT LEVELS. FOR EXAMPLE, STATUTORY EMPLOYMENT FLOORS OR PROHIBITIONS ON EMPLOYMENT CEILINGS EXIST FOR PROGRAMS FINANCED BY THE INTERIOR APPROPRIATIONS BILL, VETERANS MEDICAL CARE, AND FOR PARTS OF A NUMBER OF OTHER AGENCIES. INDEED, THE 1986 DEPARTMENT OF AGRICULTURE APPROPRIATIONS BILL WOULD SET EMPLOYMENT FLOORS FOR THREE AREAS OF THE DEPARTMENT OF AGRICULTURE. THE ADMINISTRATION HAS STATED ITS OPPOSITION TO THE CONGRESSIONAL PRACTICE OF SETTING EMPLOYMENT FLOORS, INCLUDING THOSE FOR FIELD OFFICES, WHICH MAKE IT IMPOSSIBLE FOR AGENCIES TO MANAGE FLUCTUATIONS IN THEIR WORKLOADS OR ABSORB REDUCTIONS IN THE MOST EFFICIENT MANNER. THIS IMPEDIMENT TO EXECUTIVE BRANCH MANAGEMENT WOULD BE EXACERBATED AS EMPLOYEES RETIRED FROM AGENCIES CONTROLLED BY EMPLOYMENT FLOORS. CLEARLY, ALL SUCH STATUTORY EMPLOYMENT FLOORS WOULD HAVE TO BE ELIMINATED IF WE ARE TO REDUCE THE SIZE OF THE WORK FORCE RATIONALLY AND EQUITABLY.

ADDITIONALLY, WE ARE CONCERNED THAT LANGUAGE IN THE BILL MAY PLACE RESTRICTIONS ON CONTRACTING OUT. AGENCIES MUST BE FREE TO CONTRACT OUT WHEN IT IS COST-EFFECTIVE TO DO SO.

FINALLY, WE BELIEVE THAT A 5-YEAR EMPLOYMENT LIMITATION, WITH ONLY NARROW WAIVER AUTHORITY, WOULD BE EXCESSIVELY RIGID AND COULD CAUSE SERIOUS HARM TO THE NATIONAL DEFENSE AND OTHER CRITICAL PROGRAMS. HERE, TOO, WE THINK THE ONLY ACCEPTABLE APPROACH WOULD BE TO GIVE THE PRESIDENT, OR HIS DESIGNEE, COMPLETE DISCRETION OVER THE DEGREE TO WHICH HIRING WOULD BE PERMITTED FOR VARIOUS AGENCIES AND COMPONENTS, SO AS TO ACCOMMODATE THE NEEDS OF THE GOVERNMENT AND SHIFTING PROGRAM PRIORITIES.

ONE POSSIBLE APPROACH WOULD BE TO EMPHASIZE EXECUTIVE FLEXIBILITY AND ELIMINATE THE PERSONNEL RESTRICTIONS THAT I HAVE OUTLINED TODAY AND TO DEVELOP A SORT OF "STANDBY" EARLY RETIREMENT AUTHORITY THAT WOULD PLACE THE REQUISITE DISCRETION FOR INVOKING, INCLUDING, EXCLUDING, AND RE-HIRING APPROPRIATELY WITH THE PRESIDENT.

AS I INDICATED ABOVE, WE ARE CONTINUING TO REVIEW THIS SUBJECT IN THE EXECUTIVE BRANCH, BUT I HOPE THIS INDICATION OF OUR VIEWS AT THE PRESENT TIME WILL BE HELPFUL TO THE COMMITTEE.

THANK YOU. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.

99TH CONGRESS
2D SESSION

S. 2197

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 10), 1986

Mr. ROTH (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees'
4 Optional Early Retirement Act of 1986".

5 PURPOSES

6 SEC. 2. The purposes of this Act are—

7 (1) to reduce Federal Government civilian payrolls
8 in an orderly and voluntary manner;

9 (2) to accommodate the personal plans of certain
10 Federal Government employees who desire to retire

1 but have not satisfied the applicable age and service
2 requirements;

3 (3) to allow current Federal Government employ-
4 ees to retire early in order to avoid possible adverse
5 effects of Federal budgetary conditions; and

6 (4) to provide increased job protection and career
7 opportunities for Federal Government employees, espe-
8 cially women, members of minority groups, and young
9 workers.

10 TEMPORARY VOLUNTARY EARLY RETIREMENT AUTHORITY

11 SEC. 3. Section 8336 of title 5, United States Code, is
12 amended—

13 (1) by redesignating subsection (m) as subsection
14 (n); and

15 (2) by inserting after subsection (l) the following
16 new subsection (m):

17 “(m)(1) Except as provided in paragraph (2) of this
18 subsection, an employee who—

19 “(A) during the period beginning July 1, 1986,
20 and ending January 1, 1987, is separated from the
21 service, except by removal for cause on charges of mis-
22 conduct or delinquency—

23 “(i) after completing 25 years of service;

24 “(ii) after becoming 50 years of age and
25 completing 20 years of service;

1 “(iii) after becoming 55 years of age and
2 completing 15 years of service; or

3 “(iv) after becoming 57 years of age and
4 completing 5 years of service; and

5 “(B) is not entitled to an annuity under section
6 8337 of this title or subsection (a), (b), (d), (f), (h), or (j)
7 of this section,
8 is entitled to an annuity.

9 “(2) Paragraph (1) of this subsection shall not apply to a
10 physician, nurses, a bankruptcy judge, a judge of the United
11 States Court of Military Appeals, or any law enforcement
12 officer, firefighter, or air traffic controller who is not in a
13 supervisory or administrative position, as determined by the
14 Director of the Office of Personnel Management.”.

15 COMPUTATION OF ANNUITY

16 SEC. 4. (a) The first sentence of section 8339(h) of title
17 5, United States Code, is amended by striking out “or (j)”
18 and inserting in lieu thereof “, (j), or (m)”.

19 APPLICATION OF AMENDMENTS TO OTHER FEDERAL

20 GOVERNMENT RETIREMENT SYSTEMS

21 SEC. 5. The President shall extend the application of
22 the amendments made by sections 3 and 4—

23 (1) to participants in the Central Intelligence
24 Agency Retirement and Disability System and their
25 survivors under section 292 of the Central Intelligence

1 Agency Retirement Act of 1964 for Certain Employ-
2 ees (50 U.S.C. 403 note);

3 (2) to participants in the Foreign Service Retire-
4 ment and Disability System and their survivors under
5 section 827 of the Foreign Service Act of 1980 (94
6 Stat. 2124; 22 U.S.C. 4067); and

7 (3) if determined appropriate by the President, in
8 like manner to employees of the Executive branch who
9 are participants in any other Federal Government re-
10 tirement system and their survivors.

11 LIMITATION ON REPLACEMENT OF RETIREES

12 SEC. 6. (a) For the purposes of this section—

13 (1) the term “Executive agency” has the meaning
14 given such term by section 105 of title 5, United
15 States Code, and includes the military departments
16 specified in section 102 of such title;

17 (2) the term “employee” has the meaning given
18 such term by section 2105 of such title, except subsec-
19 tion (e) of such section; and

20 (3) the term “maximum authorized number”,
21 when used with respect to the civilian employees of an
22 Executive agency, means the excess of—

23 (A) the full-time employee equivalent of the
24 total number of civilian employees that were em-
25 ployed in positions in the Executive agency on
26 July 1, 1986, over

1 (B) the full-time employee equivalent of the
2 total number of such employees who have retired
3 under any Federal Government retirement system
4 during the period beginning on July 1, 1986, and
5 ending on January 1, 1987.

6 (b) Notwithstanding any other provision of law, except
7 as provided in subsection (c), (d), (e), or (f), an appointment
8 may not be made to a position of civilian employment in an
9 Executive agency on any day during the period beginning on
10 July 1, 1986, and ending on October 1, 1991, unless the full-
11 time employee equivalent of the total number of civilian em-
12 ployees of the Executive agency after such appointment on
13 such day does not exceed the maximum authorized number of
14 civilian employees determined for such agency on such day.

15 (c)(1) The Director of the Office of Personnel Manage-
16 ment may waive the application of subsection (b) in the case
17 of a position or a class of positions in an Executive agency if
18 the Director determines that—

19 (A) the position or positions are essential for the
20 performance of a mission of the Executive agency; or

21 (B) the estimated aggregate cost of such position
22 or class of positions during the period described in sub-
23 section (b) does not exceed the estimated aggregate
24 amount of user fees that will be collected by the Fed-
25 eral Government for services performed during such

1 period by an employee in such position or employees in
2 such positions under a program or programs adminis-
3 tered by such Executive agency.

4 (2) The Director shall consult with—

5 (A) the head of an Executive agency in making a
6 determination described in paragraph (1)(A) in the case
7 of such agency; and

8 (B) the Director of the Office of Management and
9 Budget in making a determination described in para-
10 graph (1)(B).

11 (d) Subsection (b) does not apply in the case of an indi-
12 vidual who is reinstated to a position of employment the indi-
13 vidual formerly held in an Executive agency by order of a
14 court of the United States having jurisdiction to issue such
15 order or by reason of an action of the Merit Systems Protec-
16 tion Board or the Special Counsel of the Merit Systems
17 Protection Board authorized by law.

18 (e) Individuals employed by an Executive agency on
19 July 1, 1986, and persons appointed to positions in an Exec-
20 utive agency after such date within the limitation prescribed
21 in subsection (b) may be transferred during the period re-
22 ferred to in such subsection to fill a vacancy in such agency,
23 subject to any provision of law (other than subsection (b))
24 limiting authority to make such transfers.

1 (f) Subsection (b) shall not apply during a period of war
2 declared by the Congress or a period of national emergency
3 declared by the Congress or the President.

4 (g) The President shall take appropriate action to ensure
5 that there is no increase in the procurement of personal serv-
6 ices by contract by reason of the enactment of this section
7 except in cases in which it is to the financial advantage of the
8 Federal Government to increase the procurement of such
9 services.

10 (h) The Director of the Office of Personnel Management
11 may prescribe regulations to carry out this section.

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